

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

G. A. a minor, by and through
his parents, MIGUEL & BARBARA
AVILA,

Plaintiffs,

v.

SPOKANE SCHOOL DISTRICT #81,
Defendant.

NO. CV-10-408-EFS

**ORDER MEMORIALIZING ORAL
RULINGS FROM AUGUST 31, 2011
HEARING**

A telephonic scheduling conference was held in this matter on August 31, 2011. Pro se Plaintiffs Miguel and Barbara Avila ("Plaintiffs") were present, and Gregory Stevens was present on behalf of Defendant Spokane School District #81 ("the District"). During the hearing, the Court made several oral rulings with respect to scheduling matters. This Order memorializes the Court's oral rulings and provides Plaintiffs a basic overview of procedures for seeking appointment of a guardian ad litem for G. A.

I. DEADLINE FOR FILING AMENDED COMPLAINT

As noted during the August 31, 2011 hearing, if Plaintiffs wish to file an amended complaint, they must do so by December 5, 2011. Pursuant to the Court's August 2, 2011 Order, ECF No. [18](#), and Federal Rule of

1 Civil Procedure 8, Plaintiffs' amended complaint must contain a "short
2 and plain statement of the claim showing that the pleader is entitled to
3 relief." This short and plain statement must allege sufficient facts to
4 put Defendant on notice as to the substance of the claims, and must
5 plausibly give Plaintiffs the right to an entitlement to relief. See
6 *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1939 (2009).

7 If Plaintiffs choose to sue on G. A.'s behalf, the complaint must
8 also be filed by December 5, 2011. As noted in the Court's August 2,
9 2011 Order, and at the August 31, 2011 hearing, Plaintiffs may not
10 represent G. A. G. A. must have legal representation if he/she is to be
11 a party in this matter; such representation may be on behalf of G. A.
12 alone, or on behalf of both G. A. and Plaintiffs, but plaintiffs may not
13 represent G. A. as pro se litigants. Furthermore, if Plaintiffs decide
14 to file suit on G. A.'s behalf, Plaintiffs must either seek appointment
15 of a guardian ad litem or petition the Court to dispense with the
16 requirement. See *infra* Section III.

17 The Court notes in passing that under *Winkelman ex rel. Winkelman*
18 *v. Parma City School District*, 550 U.S. 516 (2007), parents of children
19 who fall within the ambit of the Individuals with Disabilities Education
20 Act (IDEA) have independently enforceable rights that "encompass the
21 entitlement to a free appropriate public education for [their] child."
22 *Id.* at 533. "[T]he statute confers those rights on the parents of
23 disabled children as well as on the children themselves." *Blanchard v.*
24 *Morton Sch. Dist.*, 509 F.3d 934, 936-37 (9th Cir. 2007). Thus, it
25 appears that Plaintiffs may seek the same remedies as pro se plaintiffs
26 suing in their own capacity that they could seek by suing on behalf of
G. A. in a representative capacity.

1 **II. MOTIONS TO EXPAND RECORD**

2 Under the IDEA, district courts hearing appeals of a state hearing
3 examiner's decision "shall receive the records of the administrative
4 proceedings," and "shall hear additional evidence at the request of a
5 party." 20 U.S.C. § 1415(i)(2)(C)(i) & (ii). The district court must
6 admit additional evidence that is non-cumulative, relevant, and otherwise
7 admissible. *EM. ex rel. E.M. v. Pajaro Valley Unified Sch. Dist.*, ___
8 F.3d ___, 2011 WL 2714168 at *4-6 (9th Cir. 2011). Additional evidence
9 is not required to be "necessary to evaluate the ALJ's determination" in
10 order to be admitted, but the Court "need not consider evidence that
11 simply repeats or embellishes evidence taken at the administrative
12 hearing." *Id.*

13 If either party wishes to admit evidence not contained in the
14 administrative record, they must request permission to do so by filing
15 a motion no later than February 6, 2012. This motion should set forth
16 the grounds for admission of the evidence, including a brief statement
17 of: 1) why such evidence does not duplicate evidence presented before the
18 administrative law judge; 2) why such evidence is relevant; and 3) why
19 such evidence is admissible under the rules of evidence. Motions to
20 admit evidence shall not exceed twenty (20) pages in length.

21 Responses to motions to admit additional evidence must be filed
22 within seven (7) days. The Court will not consider reply memoranda.¹

23 _____
24 ¹ The parties will note that these page limits and deadlines differ
25 from those set forth in Local Rule 7.1. With respect to all other
26 deadlines and page limits not modified by Court order, the parties are
expected to conform with Local Rule 7.1.

1 **III. GUARDIAN AD LITEM PROCEDURE**

2 As noted during the hearing, under Federal Rule of Civil Procedure
3 17(c), a minor who does not have an appointed representative may sue by
4 a guardian ad litem. The guardian ad litem must be formally appointed
5 by the Court, and serves to protect the interests of the child. Fed. R.
6 Civ. P. 17(c)(2); *see also Belinda K. v. Cnty. of Alameda*, 10-CV-05797-
7 LHK, 2011 WL 2690356 at *4 (N.D. Cal. July 8, 2011).

8 Local Rule 17.1 details the procedures to be followed when a minor
9 files suit. First, the minor must file suit. As noted in the Court's
10 August 2, 2011 Order, a parent or guardian cannot bring an action on
11 behalf of a minor child without retaining a lawyer. *See Johns v. Cnty.*
12 *of San Diego*, 114 F.3d 874, 877 (9th Cir. 1997). Second, at the time
13 the action is commenced, counsel for the minor plaintiff must submit to
14 the Court a list of three or more attorneys, including their
15 qualifications, who are willing to serve as guardian ad litem. LR
16 17.1(a). Third, counsel for the minor must petition the Court to appoint
17 a guardian ad litem to represent the minor's interest. *Id.* Finally,
18 Local Rule 17.1(a) provides that "[u]pon a showing of good cause, the
19 Court may dispense with the appointment of a guardian ad litem." *Id.*

20 By providing this brief overview of the appointment procedure for
21 guardians ad litem, the Court expresses no indication as to whether it
22 believes Plaintiffs should file a complaint on behalf of G. A. Though
23 it appears that Plaintiffs have no conflict in interest with G. A. and
24 could act to protect his interest, that Court expresses no indication
25
26

1 whether it believes good cause exists to dispense with the guardian ad
2 litem requirement.²

3 **IT IS HEREBY ORDERED:**

4 1. Plaintiffs Miguel and Barbara Avila's amended complaint, if any,
5 must be filed **no later than December 5, 2011, at 5:00 p.m.**

6 2. A complaint filed on behalf of Plaintiff G. A., if any, must
7 also be filed **no later than December 5, 2011, at 5:00 p.m.**

8 3. Motions by either party to admit additional evidence must be
9 filed **no later than February 6, 2012, at 5:00 p.m., and must be limited**
10 **to twenty (20) pages. Responsive memoranda must be filed within seven**
11 **(7) business days.** No reply memoranda will be considered.

12 **IT IS SO ORDERED.** The District Court Executive is directed to enter
13 this Order, distribute a copy to counsel for Defendant, and to mail a
14 copy to Plaintiffs at their new address:

15 4635 Williams Valley Rd.
16 Clayton, WA 99110

17 **DATED** this 6th day of September 2011.

18
19 S/ Edward F. Shea

20 EDWARD F. SHEA

21 United States District Judge

22 Q:\Civil\2010\408.sched.order.lc2.wpd

23 ² The Court notes that Plaintiffs may choose to solicit assistance
24 in selecting a guardian ad litem or obtaining counsel from the Gonzaga
25 University School of Law Center for Law and Justice. See
26 http://www.law.gonzaga.edu/Academic-Program/law_clinic/default.asp.